

MINUTES OF OCTOBER 19, 2015

The regular meeting of the Sussex County Board of Adjustment was held on Monday, October 19, 2015, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, and Mr. Brent Workman. Mr. Norman Rickard was absent. Also in attendance were James Sharp – Assistant County Attorney, and staff members, Ms. Janelle Cornwell – Planning and Zoning Manager, and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 4 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Finding of Facts for September 14, 2015 as circulated. Motion carried 4 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

PUBLIC HEARINGS

Case No. 11651 – Lynn Wilson & Robert Wilson – seek a variance from the front yard setback requirement (Section 115-34B of the Sussex County Zoning Ordinance). The property is located on the east side of Venetian Drive approximately 709 feet southwest of Draper Drive. 911 Address: 14 Venetian Drive, Dewey Beach. Zoning District: MR. Tax Map No.: 3-34-20.17-5.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Lynn Wilson was sworn in to testify about the Application. James Fuqua, Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Fuqua stated that the Applicants are requesting a variance of 21.1 feet from the thirty (30) feet front yard setback requirement for a proposed dwelling; that the Board approved a similar variance request in September 2012; that the Applicants were unable to construct the dwelling and the variance expired; that this variance request is for a lesser variance from the front yard requirement than the variance previously granted; that the previous dwelling on the Property has been demolished; that the cul-de-sac shown on the survey was never constructed; that the existence of the paper cul-de-sac creates a uniqueness to the Property; that the proposed house location will be located in the basic footprint of the previous dwelling; that a similar variance was granted on a neighboring property as well; that the variance is necessary to enable reasonable use of the

Property; that the practical difficulty was not created by the Applicants; that the variance will not alter the essential character of the neighborhood; that the previous home had a similar setback from the cul-de-sac; that the variance requested is the minimum variance to afford relief; that the Homeowners Association does not object to the Application; and that the proposed location of the dwelling will not be an issue if cul-de-sac is ever constructed.

Mrs. Wilson, under oath, affirmed the statements made by Mr. Fuqua.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11651 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The adjacent cul-de-sac makes the Property unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood;
5. The variance requested is less than previously sought by the Applicants; and
6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11652 – Michael Terry & Jane Terry – seek variances from the side yard setback requirement (Section 115-42B & 115-182D of the Sussex County Zoning Ordinance). The property is located on the southeast side of Blue Teal Road approximately 1,645 feet northeast of Swann Drive. 911 Address: 37072 Blue Teal Road, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.16-475.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Michael Terry was sworn in to testify about the Application. James Fuqua, Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Fuqua stated that the Applicants are requesting a variance of five (5) feet from the ten (10) feet north side yard setback requirement for a proposed dwelling, a variance of 8.24 feet from

the ten (10) feet north side yard setback requirement for the proposed HVAC, a variance of 0.4 feet from the five (5) feet south side yard setback requirement for a proposed set of steps, and a variance of 4.4 feet from the ten (10) feet south side yard setback requirement for a proposed attached shed; that the Property is located in Swann Keys; that the lot measures approximately 40 feet wide by 102 feet deep; that the rear yard is adjacent to the lagoon; that the Property is 4,064 square feet in size; that the existing manufactured home will be removed and a new dwelling will be constructed; that the Property is unique due to its narrow width and small size; that the variances will enable reasonable use of the Property; that the difficulty was not created by the Applicants; that the proposed dwelling is similar to other dwellings in the development; that the other lot owners in the development are replacing single wide manufactured homes with larger dwellings; that the Applicants did not create the size of the Property; that the proposed dwelling will not alter the essential character of the neighborhood; that the variances requested are the minimum variances necessary to afford relief; that there have been numerous variances granted in the development; that the shed will be attached to the dwelling; that the proposed shed and HVAC will be located in the side yard to allow room for parking; and that parking will be in the front yard.

Mr. Terry, under oath, affirmed the statements made by Mr. Fuqua.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11652 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique as it is only forty (40) feet wide;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11653 – Kenneth Hollobaugh & Mary Hollobaugh – seek variances from the side yard setback requirement (Section 115-42B of the Sussex County Zoning Ordinance). The property is located on the southeast side of Blue Teal Road approximately 1,046 feet northeast of Swann Drive. 911 Address: 37036 Blue Teal Road, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.16-489.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Mary Jane Hollobaugh was sworn in to testify about the Application. James Fuqua, Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Fuqua stated that the Applicants are requesting a variance of five (5) feet from the ten (10) feet north side yard setback requirement for a proposed dwelling and a variance of 8.25 feet from the ten (10) feet north side yard setback requirement for the proposed HVAC; that the Property is located in Swann Keys; that the lot measures 40 feet wide by 99 feet deep; that the rear yard is adjacent to the lagoon; that the lot is 3,998 square feet in size; that the Property is unique due to its narrow width and small size; that a conventional dwelling will not fit on the lot; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code; that the variances will enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicants; that the Applicants did not create the size of the lot; that the proposed dwelling is similar to other dwellings in the development; that the variances will not alter the character of the neighborhood; that there have been similar variances granted in the development; and that the variances are the minimum variances necessary to afford relief.

Ms. Hollobaugh, under oath, affirmed the statements made by Mr. Fuqua. Mrs. Hollobaugh testified that the dwelling will be two story dwelling and that parking will be in the front yard.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11653 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique as it is only forty (40) feet wide;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Case No. 11654 – Charles Kersey, Jr. & Barbara Kersey – seek a special use exception for a garage / studio apartment (Section 115-23C(6) of the Sussex County Zoning Ordinance). The property is located on the east side of Blacksmith Shop Road approximately 1,700 feet north of Staytonville Road. 911 Address: 10299 Blacksmith Shop Road, Greenwood. Zoning District: AR-1. Tax Map No.: 1-30-11.00-3.05.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of the Application and Ms. Cornwell read one (1) letter of opposition into the record.

Michael Charles Kersey was sworn in and testified requesting a special use exception for a garage / studio apartment; that the apartment is in the existing pole building; that he plans to build a new dwelling on the Property; that the special use exception will allow him to keep the kitchen in the pole building; that the need for the special use exception arose due to the proposed construction of the dwelling; that he has no plans to rent the apartment; that the apartment will be for personal use only; that the apartment has one bedroom; that the special use exception will improve the property values; that the Property consists of eleven (11) acres and the pole building is approximately 1,400 feet from the road; that the Property was wooded and he cleared approximately 7.5 acres; that the adjacent property owner has no objection to the Application; that the apartment is less than eight-hundred (800) square feet in size; that the apartment has been on the lot for one (1) year; that the two (2) parcels in the front of his parcel are for sale; that the area is rural in character; and that the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11654 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Hudson, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11655 – Beach Commercial Realty, LLC – seeks a variance from the front yard setback requirement (Section 115-25C of the Sussex County Zoning Ordinance). The property is located on the northwest corner of Millsboro Highway (Route 24) and Boblin Court. 911 Address: None Available. Zoning District: AR-1. Tax Map No.: 1-33-20.00-15.11.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Frank Ward was sworn in and testified requesting a variance of 10.9 feet from the forty (40) feet front yard setback requirement for a dwelling; that there is an easement in front of the Property; that the prior dwelling on the Property was removed; that a new dwelling was built in the same location as the prior dwelling; that a temporary Certificate of Occupancy was issued; that the location of the dwelling is similar to the placement of other dwellings in the neighborhood; that the prior dwelling had to be torn down because it was infested with bugs; that the Delaware Department of Transportation (“DelDOT”) took a portion of the Property in the front yard; that the loss of property created a unique situation; that the variance is necessary enable reasonable use of the Property; that the difficulty was not created by the Applicant; that the variance will not alter the essential character of the neighborhood; that the variance requested is the minimum variance necessary to afford relief; that the Property has an odd shape; that the mound septic system is located in the rear yard; and that Property has higher ground in the front yard.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11655 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its shape and elevation;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11656 – Sandra Kreis – seek variances from the front yard and side yard setback requirements (Section 115-42B and 115-185F of the Sussex County Zoning Ordinance). The property is located on the north side of Cherry Walk Drive and on the south side of David Drive, approximately 795 feet east of Camp Arrowhead Road. 911 Address: 34013 Cherry Walk Drive, Lewes. Zoning District: GR. Tax Map No.: 2-34-12.00-60.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received one (1) letter of concern in reference to the Application and had not received any correspondence in support of or in opposition to the Application.

Gil Fleming and Sandra Kreis were sworn in and testified requesting a variance of 4.9 feet from the ten (10) feet side yard setback requirement for a proposed manufactured home, a variance of 16.5 feet from the thirty (30) feet front yard setback requirement for a proposed manufactured home, a variance of 25 feet from the thirty (30) feet front yard setback requirement for an existing shed, a variance of 25.1 feet from the thirty (30) feet front yard setback requirement for an existing detached garage, and a variance of 1.5 feet from the five (5) feet side yard setback requirement for an existing detached garage.

Mr. Fleming testified that the Applicant inherited the Property; that the existing manufactured home is in poor shape and needs to be replaced; that the existing structures have been on the lot for approximately forty (40) years; that the septic system and well must be replaced; that the Property is unique as it is a through lot and the setback requirements for a through lot would make it impossible to build a dwelling on the Property; that the Property cannot be developed in strict conformity with the Sussex County Zoning Code; that the proposed manufactured home will be within the same footprint as the existing manufactured home to keep from losing existing trees on the Property; that the Property is unique in size; that the variances will not alter the character of the neighborhood; that the difficulty was not created by the Applicant; that the variances are necessary enable reasonable use of the Property; that the use will not impair the development of the neighboring and adjacent properties; that the use is not detrimental to the public welfare; that the variances requested are the least modifications of the regulations at issue; that the variances requested are the minimum variances necessary to afford relief; that the existing manufactured home is 12 feet wide; that the new home will be 16 feet by 76 feet; that the new well will be located near the old well; and that the septic system takes up a large portion of the Property.

Ms. Kreis testified that the existing detached garage is used for storage only; that the existing fuel tank will be removed; and that the existing shed and garage have been on the Property for approximately forty (40) years with no complaint.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11656 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its width and the location of the well and septic systems servicing the Property;
2. The variances are necessary to enable reasonable use of the Property;

3. The Applicant did not create the through lot therefore the exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances to afford relief.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11657 – Steve Meredith & Sue Meredith – seek a variance from the rear yard setback requirement (Section 115-25C of the Sussex County Zoning Ordinance). The property is located on the southwest side of Riverwalk Drive approximately 1,314 feet south of Meadow Creek Drive. 911 Address: 18905 Riverwalk Drive, Milton. Zoning District: AR-1. Tax Map No.: 2-35-30.00-546.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning received two (2) letters in support of the Application and had not received any correspondence in opposition to the Application.

Pamela McDonald was sworn in and testified requesting a variance of 2.1 feet from the ten (10) feet rear yard setback requirement for a proposed three season room; that she represents the Applicants; that there is an existing 10 feet by 16 feet concrete pad on the Property and the Applicants intend to enlarge the pad; that the Applicants want to build a three-season room measuring 12 feet by 18 feet on the pad; that the irregular pie shaped lot is unique; that the placement of the dwelling left little room in the rear yard for development; that the Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code; that the builder of the dwelling led the Applicants to believe there was plenty of room to construct a three-season room on the Property; that the variance will enable reasonable use of the Property; that the proposed addition is similar to others in the development; that a retention pond is adjacent to the rear yard; that the proposed addition will only be partially visible to the neighboring properties; that neighbors support the Application; that the use will not impair the uses of the neighboring and adjacent properties; that the use will not be detrimental to the public welfare; that the variance will not alter the character of the neighborhood; that the variance requested is the minimum variance to afford relief; that the Applicants increased the width of the three-season room rather than expanding the room deeper into the rear yard setback; and that the three-season room will only be one-story. Ms. McDonald submitted an exhibit for the Board to review.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11657 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique in shape and size;
2. The Property cannot otherwise be developed in strict conformity with the Sussex County Zoning Code;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Hudson, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11658 – Cellco Partnership d/b/a Verizon Wireless – seeks a special use exception to place a telecommunication tower (Section 115-23C(17) & 115-210 of the Sussex County Zoning Ordinance). The property is located on the northwest side of East Trap Pond Road approximately 1,510 feet northeast of Whaley’s Corner Road. 911 Address: 24387 East Trap Pond Road, Georgetown. Zoning District: AR-1. Tax Map No.: 1-33-1.00-3.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Brian Grevis and Petros Tsoukalas were sworn in to testify about the Application. John Tracey, Esquire, presented the case to the Board on behalf of the Applicant.

Mr. Tracey stated that the Applicant is requesting a special use exception to place a telecommunications tower; that the proposed tower will be 145 feet tall with a 5 feet tall lighting rod; that the Property is a thirteen (13) acre parcel in the Agricultural Preservation program; that the Applicant has received approval from Agricultural Preservation to erect a telecommunications tower; that there are residential properties across the street and those properties are owned by the family which owns the Property; that the tower will be placed near trees to screen it; that a gravel driveway will be constructed on the Property to lead to the tower; that the proposed tower will meet all zoning requirements and requires no variances; that there are underserved areas near the location of the proposed tower; that Verizon Wireless is required to provide reliable coverage; that the proposed tower will provide reliable coverage in that area; that there is a tower approximately 2.6 miles from the proposed site but it would not cover the gap in coverage; that the proposed tower site has Federal Aviation Administration (“FAA”) approval; that the proposed tower will meet the lighting requirements; that the RF emissions from the proposed tower are 300 times below

the Federal Communications Commission (“FCC”) maximum requirements; that the tower will provide space for collocation; that there will be six (6) feet high fence surrounding the tower and equipment; and that the proposed tower will not substantially adversely affect the uses of neighboring and adjacent properties since there is no noise, smells, or traffic issues from the site.

Mr. Tsoukalas and Mr. Grevis, under oath, affirmed the statements made by Mr. Tracey.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11658 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties and the Applicant has demonstrated that it meets the telecommunication tower requirements set forth in the Sussex County Zoning Code.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

OLD BUSINESS

Case No. 11649 – Nancy Tankelson & Francois Reverdy – seek variances from the side yard setback requirement (Section 115-34B and 115-185D of the Sussex County Zoning Ordinance). The property is located on the southeast corner of Josephine Street and Fisher Street. 911 Address: 38386 Josephine Street, Rehoboth Beach. Zoning District: MR. Tax Map No.: 3-34-20.09-138.00.

Ms. Cornwell stated that the variance requested for the existing shed is not needed since the Planning and Zoning staff determined the existing shed is a detached structure and meets the setback requirements for a detached accessory structure.

The Board discussed this case, which has been tabled since October 5, 2015.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11649 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Applicants need a lap pool for health reasons which creates a unique situation;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and

5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 4 – 0.

The vote by roll call; Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Meeting Adjourned 8:21 p.m.